IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No.3200 OF 2007

Harish Harishchandra Tumane ..Applicant.

Vs.

The State of Maharashtra ..Respondent.

Mr Rajesh M. Lakara, Advocate for the applicant.

Mr K. V. Saste, APP for the respondent No.1-State.

Mr Akhilesh Dubey, Advocate for the Complainant.

CORAM: V.C. DAGA,J.
DATED: 10.10.2007.

P.C.

1. Heard learned counsel for the applicant, learned APP for the State and learned Advocate for the complainant.

2. Perused the application and the material available on record.

3. The applicant-original accused arrested in C.R. No. I-44 of 2006, registered with Vashi Police Station, for the offence under Section 420, 467, 468 and 471 of the I.P.C., is challenging the order of cancellation of bail in Misc. Application No. 154 of 2006 dated 20.9.2007 and seeking bail under Section 439 of the Cr.P.C.

4. Needless to mention that solemn undertaking dated 24.2.2006 in Criminal Bail Application No. 309 of 2006 was given by the applicant before the Trial Court; as one of the conditions of grant of bail.

5. If the applicant was aggrieved by the bail order directing undertaking, then it was open for the applicant to challenge the same. Without challenging the order of bail,the applicant cannot be allowed to turn around and say that it is not his obligation or that he does not want to comply with the said undertaking.

6. The undertaking given is produced on record. It is admittedly, signed by the applicant under the supervision of the Jail authorities, when he was in jail custody. It is counter-signed by his Advocate. Learned Advocate for the applicant does not dispute that the said undertaking was given.

7. In the above view of the matter, no case is made out to interfere with impugned order or for grant of bail in absence of compliance of the undertaking. It appears that the applicant does not want to comply with the undertaking. In my view, such litigant who has given solemn undertaking to the Court cannot be heard unless compliance thereof is reported, otherwise undertaking given to the Courts will have no meaning. He is,thus, not entitled for bail. Reliance placed on

the judgment of the Apex Court in the case of **Bhagirathsinh Judeja vs. State of Gujarat, 1984 Cri.L.J. 160 (A.I.R. 1984 S.C. 372)**is misplaced. Looking to the peculiar facts of the case, the ratio of judgment of the said case cannot be applied to the facts of the present case.

8. In my view, mere rejection of this application will not serve the purpose. Learned Joint Sessions Judge, Thane before whom undertaking was given by the applicant, is directed to examine as to whether action for breach of undertaking can be initiated against the applicant either under Indian Penal Code or Contempt of Courts Act. After due examination the said Court is expected to take appropriate action against the applicant for non-compliance of the undertaking, so as to maintain the sanctity and dignity and magesty of Court to whom the undertaking was given.

9. In the above view of the matter and for the reasons recorded by the learned Sessions Court, Thane in its order dated 20.9.2007 in M. A. Application No. 154 of 2006, with which I concur, present application is rejected.

(V.C.DAGA,J)